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Nos. 17, 18 and 19

IN THE

Supreme Court of the United States

October Term, 1944

THE UNITED STATES OF AMERICA,

Appellant,

v.

CRESCENT AMUSEMENT COMPANY, ROCKWOOD AMUSEMENT COMPANY, CHEROKEE AMUSEMENTS, INC., *et al,*

CRESCENT AMUSEMENT COMPANY, CUMBERLAND AMUSEMENT COMPANY, LYRIC AMUSEMENT COMPANY, INC., *et al.,*

Appellants,

v.

THE UNITED STATES OF AMERICA.

Petition for Reconsideration of Motion for Leave to File Brief on Behalf of The Society of Independent Motion Picture Producers as *Amicus Curiae*

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MAY IT PLEASE THE COURT:

The undersigned, as counsel for The Society of Independent Motion Picture Producers, respectfully petitions this Honorable Court to reconsider the petitioner's motion for leave to file a brief *amicus curiae* in these cases.

1. Pursuant to subdivision 9 of Rule 27 of the Rules of this Court, petitioner sought the consent of both parties to the filing of its brief *amicus curiae*. Consent was granted by the Government and denied by counsel for the defendants. This Court denied petitioner's motion on October 23, 1944.

2. Subsequent to the denial of petitioner's motion, petitioner received from the Solicitor General the following letter in which the Government has not only renewed its consent but has gone so far as to state that the *amicus* brief would be of interest and value to the Court:

Office of the Solicitor General
Washington, D. C.

October 27, 1944

[shield of DEPARTMENT OF JUSTICE]

Morris Ernst, Esquire
285 Madison Avenue
New York, N. Y.

Re: United States v. Crescent Amusement Company, et al., Nos. 17-19, October Term 1944

Dear Mr. Ernst:

I have your letter of yesterday in which you state that in behalf of the independent producers, whom you represent, you have decided to file papers requesting reconsideration of your motion for leave to file an amicus brief. You ask that I let you know the feeling of the Department as to whether the brief which you submitted would be in aid of the Government's position and to the Court. As you know, I consented to the filing of the brief and this consent still stands. I am glad to add that I believe the brief would be of interest and value to the Court.

Yours sincerely,

(signed) CHARLES FAHY
Solicitor General

3. We respectfully submit that the foregoing letter taken together with the policy behind subdivision 9 of Rule 27 of this Court calls for a reconsideration of petitioner's original motion for leave to file.

4. Subdivision 9 of Rule 27 dispenses with the necessity of obtaining the consent of the parties to the filing of an *amicus* brief when the brief is presented by the United States and sponsored by the Solicitor General. In promulgating this Rule, the Court has in effect delegated to the private parties to litigation the right to decide who may file *amicus* briefs, except in cases where the Government as the proponent of the public interest is acting as *amicus*. In such cases the paramount interest of the Government is recognized and it is permitted to file without first obtaining consent. It would seem to be a necessary corollary of this policy that where the Government is a party litigant and seeks to have this Court accept an *amicus* brief from an outside party, its desire should be equally conclusive. Any other rule gives extraordinary power to the private litigant to withhold consent at will, and perhaps just because of the vitality of the *amicus* position, to the admission of a brief which illuminates issues of public interest.

5. This Court has in the past exercised its discretion to permit the filing of an *amicus* brief, despite one party's refusal to consent, where, as here, the litigation impinged on First Amendment guarantees. See, *e. g.*, *Sweeney* v. *Schenectady Union Publishing Company*, 316 U. S. 642 (1942). The emphasis of the *amicus* brief is to a great extent on the relation of the First Amendment to the anti-trust laws in cases involving media of communication.

6. The Court has often made exceptions from general rules in cases involving such guarantees of individual freedom as are affected here. *Cf.* footnote 4 on p. 152 of

United States v. *Carolene Products Company*, 304 U. S. 144 (1938). If the special importance attached to free speech and press warrants deviation from established rules of substantive law, we respectfully submit that it should likewise induce relaxation of less crucial procedural rules such as that dealing with obtaining consent to the filing of *amicus* briefs.

7. We respectfully refer the Court to our original motion and to our brief for a summary of the case, a description of petitioner, and an exposition of the effect of the defendants' practices on independent producers and on the movie going public in the area affected.

We, therefore, respectfully urge that the Court reconsider the motion for leave to file the attached brief on behalf of The Society of Independent Motion Picture Producers as *amicus curiae*.

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Of Counsel.

Dated: October 30, 1944.